

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

STATINTL



This is in reply to your memorandum of 14 April 1977, addressed to the Director of Personnel, which was referred to this Office for action. In your memorandum you questioned the correctness and consistency of the Office of General Counsel opinion relied upon by the Office of Communications in denying your claim for back pay based on Comptroller General opinion B-183086(1975). Further, you request that your claim be processed through appropriate Agency appeal channels.

Initially let me state that the appropriate Agency appeal channel for your action would be to the Office of the Inspector General and thereafter to the Deputy Director of Central Intelligence. In accordance with your expressed wish, I have forwarded a copy of your memorandum to that office for their investigation.

The legal opinion to which you object grew out of a 1976 request by the Deputy Director of Personnel regarding the legal applicability, if any, of two Comptroller General decisions (B-183086, 5 December 1975, and B-184990, 20 February 1976) to claims by several CIA employees for retroactive temporary promotions for extended details to higher grades. These decisions interpreted Civil Service Commission (CSC) regulations as requiring that employees detailed to higher grade positions in excess of 120 days without prior CSC approval be given retroactive temporary promotions and back pay for the period beyond 120 days for the difference between the compensation they received and the normal compensation of positions to which they were assigned. Our conclusion was that these Comptroller General decisions did not support claims of compensation by CIA employees because: 1) the CSC regulations upon which the Comptroller General decisions were based include regulations from which Agency employees are specifically exempt; 2) the Agency has no regulations of its own which mandate procedures comparable to the CSC regulations; and 3) in any event even if retroactive promotions were deemed appropriate in such cases (which they are not), it is doubtful as a matter of law whether retrospective relief in the form of back pay could be granted under these circumstances.

Accordingly, it was the opinion of this Office that the claims then at issue, as well as any future claims similarly based on the two Comptroller General decisions, must be denied if a finding is made that: 1) the claimant

was indeed detailed to a higher grade position for an extended period; 2) there is no evidence that the claimant had been denied promotion through administrative or clerical error; and 3) the detail was, in fact, consistent with Agency policy regarding internal details *assignment*.

In addition, this conclusion is supported by the Comptroller General of the United States, the individual to whom any external Agency appeal would be directed. In a 1959 decision (B-140877) the Comptroller General examined the specific question of whether a CIA employee who served in a higher temporary position would be entitled to pay at the higher rate. He held that the Agency was not required to follow 5 U.S.C. 3341 concerning the detailing of employees. As you will remember, this statute was cited in Comptroller General decision B-183086(1977) as supporting the earlier 1975 and 1976 decisions which required retroactive temporary promotions for employees in the classified service improperly detailed to higher grade positions for extended periods. This 1959 opinion was not overruled by B-183086 or any of the companion cases.

I regret that our legal opinion could not be more favorable in your case, but hope that this letter assists you in understanding the basis of our decision.

Sincerely,



Assistant General Counsel

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